

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GODOFREDO B. ADOR AND DIOSDADO B. ADOR III, APPELLANTS.*G.R. Nos. 140538-39. June 14, 2004*

Ponente: PUNO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-140538-39/>**PUNO, J.:**

The quiescence of the fading day was shattered by bursts of gunfire, startling the otherwise tranquil but sanguine folks of Pacol, Naga City. As the fusillade of shots ceased and the wisp of smoke cleared, frolicking promenaders stumbled upon Ompong Chavez who was gasping his last, clutching his intestines which had spewed out from his bloodied stomach. He did not in fact reach the hospital alive. A breath away, Abe Cuya lay lifeless on the pavement. He died on the spot. For the twinned deaths, the Adors, six (6) of them, were haled to court.

In two (2) separate informations,[1] Diosdado Sr.,[2] Diosdado Jr., Diosdado III, Godofredo, Rosalino and Allan, all surnamed Ador, were charged with the murder of Absalon “Abe” S. Cuya III and Rodolfo “Ompong” S. Chavez. The Informations in Crim. Cases Nos. 7-6815 and 97-6816 identically read:

That on or about March 10, 1997, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent to kill, with treachery and the aid of armed men, did then and there willfully, unlawfully and feloniously shoot ABSALON “ABE” CUYA III (RODOLFO “OMPO” CHAVEZ y SAN ANDRES[3] for Crim. Case No. 97-6816) with firearms, inflicting upon him multiple and mortal gunshot wounds which caused his death, to the damage and prejudice of his heirs.

With the aggravating circumstance of evident premeditation and nighttime.

CONTRARY TO LAW.

However, only four (4) of the six (6) Adors, namely, Diosdado Sr., Godofredo, Rosalino and Allan, were taken into custody. The two (2), Diosdado Jr. and Diosdado III, remained at large. Trial thus proceeded only against Diosdado Sr., Godofredo, Rosalino and Allan who all pleaded not guilty. Diosdado Sr. is the father of Diosdado Jr., Diosdado III and Godofredo, while Rosalino is the father of Allan. Diosdado Sr. and Rosalino are brothers.[4]

In its effort to secure the conviction of the accused, the prosecution presented a total of sixteen (16) witnesses: Mercy Beriña, Larry Cado, Medico-Legal Officer of Naga City Dr. Joel S. Jurado, Police Inspector Ma. Julieta Razonable, SPO1 Benjamin Barbosa, SPO3 Augusto Basagre, Major Ernesto Idian, Inspector Reynaldo F. Fulgar, SPO1 Noli Reyes Sol, SPO3 Eduardo C. Bathan, Inspector Vicente C. Laut, Ernani Castillo, PO3 Augusto I. Nepomuceno, Absalon Cuya Sr., Efren Chavez and Pablo Calsis.

From the evidence of the prosecution, it appears that on March 10, 1997, at around seven-thirty in the evening, while Mercy Beriña, Larry Cado and some eleven (11) others were leisurely walking along Kilometer 11 on their way to Zone 1, Kilometer 10, Pacol, Naga City, to attend a wedding anniversary, they heard several gunshots. Shortly after, they met a certain Pablito Umali who told them that “Ompong” Chavez had been shot. They ran to

Chavez straight off and saw him already lying on the ground, about 1½ meters away from a lighted electric post, holding on to his intestines which were starting to come out. Beriña shook Chavez and asked him what had happened. Chavez replied “tinambangan kami na Ador” (“We were ambushed by the Adors”) and requested that he be brought to the hospital as he was dying. About eight (8) meters from where Chavez was, in a dark spot, lay “Abe” Cuya, dead.[5]

Upon learning of the shooting incident through their radio communication, SPO1 Benjamin Barbosa, together with PO2 Alexander Diaz, immediately proceeded to the crime scene to conduct an investigation. SPO3 Eduardo Bathan and SPO1 Wilfredo Fernandez, among others, were already there.[6] SPO1 Barbosa collected some pieces of evidence, took some pictures and made some sketches.[7] SPO1 Fernandez on the other hand interviewed one Cresenciana Mendoza in her house which was nearby, and when he heard people shout that Chavez was still alive, he brought Chavez to the hospital but the latter expired on the way.[8]

That same evening, upon being informed that the Adors had a long-standing grudge against the Cuyas, SPO1 Barbosa sought the help of then Barangay Captain Josue Perez to accompany him to the residence of the Adors. They arrived at the Adors at around ten o’clock that evening and spoke with their patriarch, Diosdado Ador Sr. SPO1 Barbosa looked for the other male members of the Ador family but was told by Diosdado Sr. that they were already asleep. Diosdado Sr. nevertheless promised to present them the following day.[9]

The following morning, March 11, 1997, Barangay Captain Perez accompanied the Adors, namely, Diosdado Sr., Diosdado III, Godofredo, Rosalino, Allan and Reynaldo, to SPO1 Barbosa at the PNP Central Police Headquarters. The Adors were informed of their constitutional rights to remain silent and to choose their own counsel. They were then brought to the PNP Crime Laboratory at the Provincial Headquarters and subjected to paraffin tests.[10] On the way to the crime laboratory, Godofredo told his police escort that he had been entrusted with a handgun which he kept in his residence.[11] The information was relayed to Major Ernesto Idian, then Deputy Chief of Police of Naga City, who ordered PO3 Augusto I. Nepomuceno to accompany him in recovering the gun because Godofredo said that he would turn in the gun only to PO3 Nepomuceno. Thus, Major Idian, PO3 Nepomuceno and some others accompanied Godofredo to the latter’s residence.

Upon reaching the Ador residence, Godofredo, together with PO3 Nepomuceno, went to their backyard, retrieved the gun from under a fallen coconut trunk and turned it in to the latter. Godofredo allegedly told the police that he fired the said gun outside their house on the night of March 10 after he heard several gunshots.[12] PO3 Nepomuceno identified the gun as a caliber .38 “paltik” handgun which had no serial number.[13] PO3 Nepomuceno then turned over the handgun to Major Idian[14] who likewise identified it as a .38 caliber revolver. Major Idian returned the handgun to PO3 Nepomuceno for ballistic and paraffin examination.[15] Thereafter, PO3 Nepomuceno placed his initials on the gun and put it in his private locker while preparing the documents for the examinations and the possible filing of a case for Illegal Possession of Firearm.[16]

Also, on the same day, March 11, 1997, Dr. Joel S. Jurado, Medico-Legal Officer of Naga City, conducted an autopsy on the bodies of Chavez and Cuya. Based on the autopsy reports, Dr. Jurado testified that Cuya sustained five (5) gunshot wounds and died from “cardio-pulmonary arrest, massive intra-thoracic, intra-abdominal, intra-cranial hemorrhage secondary to multiple gunshot wounds penetrating the heart, brain, lungs and digestive tract.”[17] Chavez on the other hand had three (3) gunshot wounds and died from “traumatic shock and massive intra-abdominal hemorrhage secondary to multiple gunshot wounds penetrating the right kidney and the internal abdominal organs.”[18] Dr. Jurado further testified that that he recovered a slug from Cuya’s head three (3) days after he conducted the autopsy - after Cuya’s relatives called his attention to a protruding mass in Cuya’s head. Thus, he had Cuya’s cadaver sent back to the funeral parlor, opened it and was able to extract a deformed .38 caliber slug which he thereafter submitted to the City Prosecutor’s Office.[19]

Police Inspector Reynaldo Fulgar, Chief of the Firearm Identification Section of the PNP Crime Laboratory, Camp Ola, Legaspi City, testified that based on the ballistic examination he conducted on the bullets submitted to his office, the .38 caliber slug recovered from Cuya's head matched the three (3) .38 caliber test bullets which were test-fired from the suspected firearm surrendered by Godofredo. He however averred that the .38 caliber bullets were actually fired from a .357 Smith and Wesson Magnum homemade revolver without serial number, and not from a .38 caliber revolver.[20]

The paraffin casts taken from the Adors were also transmitted to the PNP Crime Laboratory Services for examination and yielded the presence of gunpowder nitrates, thus –

- (1) Diosdado A. Ador – both hands, positive;
- (2) Diosdado B. Ador III – right hand, positive; left hand, negative;
- (3) Godofredo B. Ador – right hand, positive; left hand, negative;
- (4) Rosalino A. Ador – both hands, positive;
- (5) Reynaldo T. Ador – both hands, negative;[21]
- (6)

Allan T. Ador – both hands, positive. [22]

Absalon Cuya Sr., father of deceased Cuya III, said that the killing of his son was driven by the long-standing feud between the Adors and his family. He said that Diosdado Jr. had earlier accused his other son Liberato of frustrated homicide for allegedly stabbing him (Diosdado Jr.).[23] Then, Adelina, a daughter of Diosdado Sr., filed a case for abduction with multiple rape against him, Absalon III, Rayne and Josephine, all surnamed Cuya, after the romantic relationship between Adelina and his deceased son Absalon III turned sour.[24] He also presented official receipts of the funeral and burial expenses which amounted to P10,230.00.[25]

Efren Chavez, brother of deceased Chavez, likewise spoke of the animosity between the Chavez and the Ador families. He produced a certification from the PNP Naga City Police Station that on February 17, 1997, a blotter was entered in the Daily Record of Events showing that deceased Chavez reported a certain Ricardo Ador who while under the influence of liquor caused him physical injury.[26] The witness likewise presented an official receipt showing that the family spent P3,500.00 for the funeral of the deceased Chavez.[27] After presenting Chavez, the prosecution rested its case.

On April 7, 1998, the four (4) accused filed a demurrer to evidence “for utter lack of evidence.”[28] On May 13, 1998, the trial court dismissed the cases against Diosdado Sr., Rosalino and Allan but denied the demurrer to evidence against Godofredo –

WHEREFORE, this Court finds the demurrer to evidence to be justified for the accused Diosdado A. Ador, Allan T. Ador and Rosalino Ador, hence, the same is hereby granted insofar as these accused are concerned. Said accused therefore, namely: Diosdado A. Ador, Allan T. Ador and Rosalino Ador are ACQUITTED in Crim. Cases Nos. 97-6815 and 97-6816. The bailbonds posted for their provisional liberty are hereby cancelled.

Trial of the case insofar as Godofredo B. Ador is concerned shall proceed.

SO ORDERED.[29]

Thus, trial proceeded against Godofredo.

For his defense, Godofredo denied any participation in the killings of Cuya and Chavez. He said that on March 10, 1997, at around seven o'clock in the evening, he heard several gunshots while he was having dinner with his wife and four (4) children in their house in Pacol, Naga City. Since his wife advised him not to go out anymore, he slept after dinner. The following day, while he was gathering pili nuts, his long-time friend Dominador Bautista arrived and asked him to go down from the tree. Bautista wanted to borrow money and on his way to see him, found a gun by the footpath. Bautista gave the gun to him. It was his first time to hold a gun. He tried it out and fired three (3) times. After firing the gun, he removed the empty shells from its chambers and threw them away. He then wrapped the gun with plastic and hid it under a coconut trunk. Bautista left when he told him that he had no money. He then continued to gather pili nuts until Major Idian and three (3) other policemen came.

Godofredo's father told him that they were being suspected of killing Chavez and Cuya the night before. Thus, they went to the provincial headquarters, were subjected to paraffin testing and made to sign a blank bond paper. After that, they went back to the central police station. At the central police station, Godofredo narrated to a certain Calabia that that morning, his friend Bautista found a gun along the road and gave it to him. He hid the gun under a coconut trunk. Calabia relayed the information to Major Idian who directed PO3 Nepomuceno to go with Godofredo to get the gun. Godofredo led PO3 Nepomuceno to where he hid the gun, retrieved it and handed it to the latter. They then returned to the police headquarters where he was jailed. He asserted that the gun presented in court is different from the gun he surrendered to the police.[30]

Bautista corroborated Godofredo's story. He testified that he found the gun which Godofredo yielded to PO3 Nepomuceno. He said that he was on his way to see Godofredo to borrow money when he chanced upon the handgun on the pathway. He gave the gun to Godofredo and the latter tested it by pulling its trigger. After firing the gun, Godofredo removed the empty shells and threw them. Godofredo then wrapped the gun with plastic and hid it under a fallen coconut trunk.[31]

Meanwhile, Diosdado Jr. was arrested on October 9, 1998, at Barangay Doña, Orani, Bataan, and committed to the Naga City Jail on November 17, 1998, while Diosdado III surrendered to the court and was committed to the same city jail on November 22, 1998. On November 23, 1998, both Diosdado Jr. and Diosdado III were arraigned and entered a plea of not guilty. Hence, trial against them commenced and proceeded jointly with the case of the remaining accused, Godofredo.

The prosecution presented Pablo Calsis[32] as a witness against Diosdado Jr. and Diosdado III. Calsis testified that on March 10, 1997, at around 7:30 in the evening, he dropped by the house of Cresenciana Mendoza whom he fondly called Lola Kising at Kilometer 10, Pacol, Naga City, before going home from work. After asking permission from her to go home and while about to urinate outside her house, he heard several gunshots. He ducked by a sineguelas tree at a nearby flower plantation. As he was about to stand up, he saw Diosdado Jr., Diosdado III, Godofredo and another unidentified man run away. Godofredo was carrying a short firearm while Diosdado Jr. had a long firearm.[33] He saw Chavez and Cuya lying on the road. Chavez was about five (5) meters away from where he stood while Cuya was ten (10) meters away. The place was illuminated by a bright light from an electric post. There were no other people around. Calsis ran away for fear that he might be identified by the assailants. He heard Chavez mumbling but shirked nevertheless.[34]

Calsis narrated to Absalon Cuya Sr. what he saw only after about one (1) year and nine (9) months. Fear struck him.[35] He maintained that he knew the assailants because he and his wife lived in the house of Lola Kising after they got married.[36] Immense fear prevented him from attending to Chavez, even while he heard him murmuring, and from informing the families of the victims of the incident that very same night. He was about to tell the Chavez family the following morning but was counseled by his Lola Bading, the sister of his Lola Kising, against getting involved in the case.[37] Calsis and his family left their residence in Pacol one (1) month after the

incident because he was afraid the assailants might have identified him.[38] Even Lola Kising left her residence two (2) months after the incident.[39] It was only after he learned from Absalon Cuya Sr. that the trial court dismissed the cases for lack of evidence insofar as some of the original accused were concerned that he took pity on the respective families of the victims who have failed to get justice for the death of their loved ones.[40]

In defense, Diosdado Jr. testified that on March 10, 1997, he was in Marikina City working as a warehouseman and timekeeper of the Consuelo Builders Corporation. He was there the whole time from February 15, 1997, until March 24, 1997.[41] Pablo Aspe, a co-worker of Diosdado Jr., corroborated the latter's testimony. He said that on February 15, 1997, he and Diosdado Jr. left Pacol, Naga City, together to work in Consuelo Construction in Marikina City. They were with each other in Marikina City the whole time from February 15, 1997, until he (Aspe) went home to Naga City on March 22, 1997. While in Marikina City, they resided and slept together in their barracks at the construction site.[42]

Diosdado III also took the witness stand. On March 10, 1997, at around seven o'clock in the evening, he was at their house at Zone 1, Pacol, Naga City, watching television with his parents and cousins Reynaldo and Allan when they heard gunshots. They ignored the gunshots, continued watching television and slept at eight o'clock. The following day, at around six o'clock in the morning, while he was fetching water, four (4) policemen arrived at their house and talked to his father. Thereafter, his father called him, his brother Godofredo, uncle Rosalino and cousins Allan and Reynaldo. The policemen then requested all of them to go to the PNP Central Police Headquarters for investigation regarding the killings of Chavez and Cuya. Upon reaching the police headquarters, they were interviewed by the media and afterwards brought to the provincial headquarters where they were subjected to paraffin tests. They were then brought back to the Central Police Headquarters and later allowed to go back home to Pacol.

Then, sometime in October, 1997, his father was arrested by the police. Diosdado III was at their residence when his father was picked up. Only his father was taken by the police. He continued to reside in their house until April, 1998, when he transferred to Sagurong, San Miguel, Tabaco, Albay, to work as a fisherman. On November 21, 1998, he received a letter from his father telling him to come home. Thus, he went home the following day. On November 23, 1998, he surrendered to the court.[43]

The defense also presented Barangay Captain Josue Perez and an uncle of Diosdado Jr. and Diosdado III, Jaime Bobiles. Perez testified that he was the barangay captain of Pacol from 1982 until May, 1997. In 1996, Crescenciana Mendoza left their barangay permanently to live with her children in Manila because she was sickly and alone in her house. He said that Mendoza never came back. He does not know any Pablo Calsis and the latter could not have talked to Mendoza on March 10, 1997, because at that time, Mendoza was not there and her house was already abandoned.[44] Similarly, Bobiles confirmed the testimony that Diosdado III worked as a fisherman in Tabaco and stayed in his residence from May 1, 1998, until November 1998 when Diosdado III received a letter from his father and had to go home.[45]

In rebuttal however, prosecution witness SPO1 Fernandez asserted that he interviewed Crescenciana Mendoza that fateful night of March 10, 1997.[46] After the rebuttal witness was presented, the cases were finally submitted for decision.[47]

On August 2, 1999, the trial court held that "a chain of circumstances x x x lead to a sound and logical conclusion that indeed the accused (Diosdado III and Godofredo) committed the offense charged"[48] and as such rendered judgment –

WHEREFORE, premises considered, this court finds the accused Godofredo B. Ador and Diosdado B. Ador III GUILTY beyond reasonable doubt of the crime of MURDER, defined and penalized under the provisions

of Article 248 of the Revised Penal Code, as amended by Republic Act 7659 in Criminal Cases Nos. 97-6815 and 97-6816, hereby sentences the said accused Godofredo B. Ador and Diosdado B. Ador III to suffer the penalty of RECLUSION PERPETUA in Criminal Case No. 97-6815; RECLUSION PERPETUA in Criminal Case No. 97-6816, to pay the heirs of Absalon “Abe” Cuya III P25,000 each by way of actual damages and P50,000 in each criminal case by way of indemnity. To pay the heirs of Rodolfo “Ompong” Chavez the sum of P50,000 in each criminal case by way of indemnity, such accessory penalties as provided for by law and to pay the cost. For insufficiency of the prosecution to prove the guilt of the accused Diosdado B. Ador, Jr. beyond reasonable doubt, he is hereby ACQUITTED in Crim. Cases Nos. 97-6815 and 97-6816.

The Jail Warden of the Naga City District Jail is hereby ordered to forthwith release from its custody the accused Diosdado B. Ador, Jr., unless his further detention is warranted by any other legal cause or causes.

SO ORDERED.[49]

Hence, this joint appeal interposed by Diosdado III and Godofredo. They maintain that the trial court gravely erred in convicting them of murder based on circumstantial evidence. The testimony of prosecution witness Pablo Calsis that he saw them running away from the scene of the crime was concocted. The handgun turned in by Godofredo was not the same gun presented by the prosecution during the trial. The unusual discovery of a slug from the head of the deceased - three (3) days after the autopsy was conducted and after the cadaver was turned over to the family of the victim - was quite doubtful. Even the supposed dying declaration of the victim specifically pointed to neither Diosdado III nor Godofredo. And, the trial court erred in admitting in evidence those taken against them in violation of their constitutional rights to counsel during custodial investigation.[50]

The rules of evidence allow the courts to rely on circumstantial evidence to support its conclusion of guilt.[51] It may be the basis of a conviction so long as the combination of all the circumstances proven produces a logical conclusion which suffices to establish the guilt of the accused beyond reasonable doubt.[52] All the circumstances must be consistent with each other, consistent with the theory that all the accused are guilty of the offense charged, and at the same time inconsistent with the hypothesis that they are innocent and with every other possible, rational hypothesis except that of guilt.[53] The evidence must exclude each and every hypothesis which may be consistent with their innocence.[54] Also, it should be acted on and weighed with great caution.[55] Circumstantial evidence which has not been adequately established, much less corroborated, cannot by itself be the basis of conviction.[56]

Thus, for circumstantial evidence to suffice, (1) there should be more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[57] Like an ornate tapestry created out of interwoven fibers which cannot be plucked out and assayed a strand at a time apart from the others, the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion that the accused, to the exclusion of all others, is guilty beyond reasonable doubt.[58] The test to determine whether or not the circumstantial evidence on record are sufficient to convict the accused is that the series of the circumstances proved must be consistent with the guilt of the accused and inconsistent with his innocence.[59] Accordingly, we have set guidelines in appreciating circumstantial evidence: (1) it should be acted upon with caution; (2) all the essential facts must be consistent with the hypothesis of guilt; (3) the facts must exclude every theory but that of guilt; and (4) the facts must establish such a certainty of guilt of the accused as to convince the judgment beyond a reasonable doubt that the accused is the one who committed the offense.[60]

Measured against the guidelines set, we cannot uphold the conviction of the accused based on the circumstantial evidence presented.

The first circumstance which the prosecution sought to prove is that the accused were supposedly seen fleeing

from the locus criminis, armed with their respective weapons. Thus, the trial court, gleaned from the evidence presented, found that “[w]hen about to stand, Calsis saw Godofredo B. Ador, Diosdado B. Ador, Jr. and Diosdado B. Ador III, and a person going to the direction of the house of the Adors which is about 500 meters away.”[61] In fact, prosecution witness Calsis allegedly even saw Diosdado Jr. carrying “a long firearm but x x x could not determine what kind of gun it was.”[62] However, the trial court acquitted Diosdado Jr. But only rightly so. For, Calsis had difficulty in identifying the Adors notwithstanding his assertion that he knew and saw them personally. We defer to his direct examination –

ATTY. TERBIO (Private Prosecutor):

Q. You said you recognized the persons running, could you tell us their names?

PABLO CALSIS:

A. Yes sir.

Q. Name them?

A. Godofredo Ador, Jr., Sadang III.

Q. How about the others?

A. I could not tell his name but if I see him I could identify him.

Q. The 4 persons whom you saw that night, if they are present in court, please point them out?

A. Yes sir.

Q. Point particularly Godofredo Ador, Jr.?

A.

(Witness pointed or tapped the shoulder of a person inside the courtroom who answered by the name Diosdado Ador, Jr.)

Q. How about this Sadang III?

A.

(Witness tapped the shoulder of a man who answered by the name of Diosdado Ador III.)

Q. Likewise, point to the third person?

A.

(Witness pointed to a man...)

COURT:

Delete that portion from the record, he is not on trial.

ATTY TERBIO:

Q. You said you saw 4 persons, is the fourth one inside the courtroom?

A. None sir.

Q. But if you saw that person, will you be able to recognize him?

A. Yes sir.

Q. Why do you know these persons whom you just tapped the shoulder?

x x x x x x x x

A. I know these persons having lived in the house of Lola Kising.

Q. How far?

A. Around 100 meters.

Q. On the said date and time and place, you said you saw them running, how far were you from them?

A.

Around 10 meters. (Emphases supplied)[63]

The testimony of Calsis, if at all, could hardly be used against Diosdado III whom he miserably failed to positively identify during trial. In fact, the acquittal of Diosdado Jr. by the trial court renders the entire testimony of Calsis in serious doubt. Calsis was presented to positively identify the assailants who were supposedly personally known to him and were just ten (10) meters away from him. It puzzles us no end why he cannot even identify the Adors in open court.

Thus, despite Calsis' assertion that Diosdado Jr. was one of the assailants, the trial court doubted him and gave credence to the alibi of Diosdado Jr. that the latter was in Nangka, Marikina, when the killings took place. The trial court favored the unbiased testimony of Aspe who said that Diosdado Jr. worked as a timekeeper and warehouseman with him at the Consuelo Construction at Nangka, Marikina, from February 15, 1997, until March 22, 1997, and went home to Pacol only on May 27, 1997. This ruling is strengthened by the fact that on the morning following the killings, all the male members of the Ador family were brought to the police headquarters for paraffin examination and Diosdado Jr. was not among them.[64] We thus respect the finding of the trial court that indeed Diosdado Jr. was not at the scene of the crime absent any indication that the lower court overlooked some facts or circumstances which if considered would alter the outcome of the case.[65]

While it is true that the courts are not bound to accept or reject an entire testimony, and may believe one part and disbelieve another,[66] our Constitution and the law mandate that all doubts must be resolved in favor of the accused. Calsis committed an obvious blunder in identifying the supposed assailants which this Court cannot simply let go. On the contrary, it creates reasonable doubt in our minds if Calsis really saw the persons he allegedly saw or if he was even where he said he was that evening. For, it is elementary that the positive identification of the accused is crucial in establishing his guilt beyond reasonable doubt. That is wanting in the instant case.

What is more, Calsis' asseverations, at the outset, could no longer be used against Godofredo since both the prosecution and the defense have already rested and the case against Godofredo was already submitted for decision when Calsis was presented.[67] Neither can they still be used against Diosdado Jr. who was already acquitted by the trial court.

Both Diosdado III and Godofredo denied the charges hurled against them. But, while it is true that alibi and denial are the weakest of the defenses as they can easily be fabricated,[68] absent such clear and positive identification, the doctrine that the defense of denial cannot prevail over positive identification of the accused must yield to the constitutional presumption of innocence.[69] Hence, while denial is concededly fragile and unstable, the conviction of the accused cannot be based thereon.[70] The rule in criminal law is firmly entrenched that verdicts

of conviction must be predicated on the strength of the evidence for the prosecution and not on the weakness of the evidence for the defense.[71]

The second circumstance is the handgun turned in by Godofredo. But this was bungled by the prosecution. Major Idian, Deputy Chief of Police of the Naga City Police Station, to whom the handgun was turned over after Godofredo surrendered it, identified it as a caliber .38 revolver, thus –

ATTY TERBIO (Private Prosecutor):

Q. What kind of firearm was it?

MAJOR IDIAN:

A. Revolver handgun, caliber .38 with 6 rounds ammunition.

Q. What is the caliber?

A. 38 caliber.[72]

Similarly, PO3 Nepomuceno who then had been with the PNP for eight (8) years already and to whom Godofredo turned in the handgun, likewise identified it as a caliber .38, thus –

ATTY TERBIO (Private Prosecutor):

Q. What is the caliber of that gun?

PO3 NEPOMUCENO:

A. .38 caliber.[73]

However, Insp. Fulgar, Chief of the Firearm Identification Section of the PNP Crime Laboratory, testified that “[t]he indorsement coming from the City Prosecutors Office x x x alleged that the .38 caliber live bullet was fired from a .38 caliber revolver. But our office found out that the firearm was not a .38 caliber revolver but a .357 caliber revolver.”[74]

Could it be that the handgun was replaced before it was turned over to the PNP Crime Laboratory? While the prosecution traced the trail of police officers who at every stage held the gun supposedly recovered from Godofredo, it never clarified this discrepancy which is quite glaring to ignore. It is difficult to believe that a Deputy Chief of Police and a police officer of eight (8) years will both mistake a .357 caliber for a .38 caliber handgun. Likewise, a Chief of the Firearm Identification Section of the PNP Crime Laboratory cannot be presumed not to know the difference between the two (2) handguns. Suffice it to say that the prosecution failed to clear up the variance and for this Court to suggest an explanation would be to venture into the realm of pure speculation, conjecture and guesswork. Thus, faced with the obvious disparity in the suspected firearm used in the crime and that which was turned over by Godofredo, his declaration that the handgun presented in court was different from the gun he gave to the police deserves serious, if not sole consideration.

Consequently, even the third circumstance, the .38 caliber slug supposedly recovered from the head of the victim three (3) days after the autopsy was conducted loses evidentiary value as its source is now highly questionable. It has become uncertain whether the deformed slug was fired from the .38 caliber revolver turned in by Godofredo or from a .357 caliber handgun as attested to by the Chief of the Firearm Identification Section of the PNP Crime Laboratory.

Neither can this Court rely on the dying declaration of the dying Chavez nor on the results of the paraffin tests to convict either Diosdado III or Godofredo or both. To refute these, we need not go far and beyond the 13 May

1998 Order of the trial court partially granting the demurrer to evidence filed by the accused –

The only direct evidence introduced by the prosecution is the testimony of Mercy Beriña, that she heard Rodolfo “Ompong” Chavez say “tinambangan kami na Ador” (We were ambushed by the Adors). Sad to say, no specific name was ever mentioned by the witness. Neither was she able to tell how many (persons) “Adors” were involved. This testimony if it will be given credence may inculcate any person with the family name Ador as assailant. The prosecution therefore was not able to establish with moral certainty as to who of the Adors were perpetrators of the offense x x x x Paraffin tests are not conclusive evidence that indeed a person has fired a gun.

The fact that the accused-appellants tested positive of gunpowder nitrates does not conclusively show that they fired the murder weapon, or a gun for that matter, for such forensic evidence should be taken only as an indication of possibility or even of probability, but not of infallibility, since nitrates are also admittedly found in substances other than gunpowder. (People v. Abellarosa, G.R. No. 121195, 27 November 1996; People v. de Guzman, 250 SCRA 118; People v. Nitcha, 240 SCRA 283)[75]

Thus, while a dying declaration may be admissible in evidence, it must identify with certainty the assailant. Otherwise, it loses its significance. Also, while a paraffin test could establish the presence or absence of nitrates on the hand, it cannot establish that the source of the nitrates was the discharge of firearms – a person who tests positive may have handled one or more substances with the same positive reaction for nitrates such as explosives, fireworks, fertilizers, pharmaceuticals, tobacco and leguminous plants.[76] In People v. Melchor,[77] this Court acquitted the accused despite the presence of gunpowder nitrates on his hands –

[S]cientific experts concur in the view that the result of a paraffin test is not conclusive. While it can establish the presence of nitrates or nitrites on the hand, it does not always indubitably show that said nitrates or nitrites were caused by the discharge of firearm. The person tested may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, pharmaceuticals and leguminous plants such as peas, beans and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco. The presence of nitrates or nitrites, therefore, should be taken only as an indication of a possibility but not of infallibility that the person tested has fired a gun.

In fine, the admissions made by Godofredo to Major Idian and PO3 Nepomuceno including the gun in question cannot be considered in evidence against him without violating his constitutional right to counsel. Godofredo was already under custodial investigation when he made his admissions and surrendered the gun to the police authorities. The police had already begun to focus on the Adors and were carrying out a process of interrogations that was lending itself to eliciting incriminating statements and evidence: the police went to the Ador residence that same evening upon being informed that the Adors had a long-standing grudge against the Cuyas; the following day, all the male members of the Ador family were told to go to the police station; the police was also informed of the dying declaration of deceased Chavez pointing to the Adors as the assailants; the Adors were all subjected to paraffin examination; and, there were no other suspects as the police was not considering any other person or group of persons. The investigation thus was no longer a general inquiry into an unsolved crime as the Adors were already being held as suspects for the killings of Cuya and Chavez.

Consequently, the rights of a person under custodial investigation, including the right to counsel, have already attached to the Adors, and pursuant to Art. III, Sec. 12(1) and (3), 1987 Constitution, any waiver of these rights should be in writing and undertaken with the assistance of counsel. Admissions under custodial investigation made without the assistance of counsel are barred as evidence.[78] The records are bare of any indication that the accused have waived their right to counsel, hence, any of their admissions are inadmissible in evidence against them. As we have held, a suspect’s confession, whether verbal or non-verbal, when taken without the assistance

of counsel without a valid waiver of such assistance regardless of the absence of such coercion, or the fact that it had been voluntarily given, is inadmissible in evidence, even if such confession were gospel truth.[79] Thus, in *Aballe v. People*,^[80] the death weapon, a four-inch kitchen knife, which was found after the accused brought the police to his house and pointed to them the pot where he had concealed it, was barred from admission as it was discovered as a consequence of an uncounseled extrajudicial confession.

With hardly any substantial evidence left, the prosecution likewise played up the feud between the Adors on one hand and the Chavezes and the Cuyas on the other hand, and suggested that the Adors had an axe to grind against the Chavezes and the Cuyas. For sure, motive is not sufficient to support a conviction if there is no other reliable evidence from which it may reasonably be adduced that the accused was the malefactor.^[81] Motive alone cannot take the place of proof beyond reasonable doubt sufficient to overthrow the presumption of innocence.^[82]

All told, contrary to the pronouncements of the trial court, we cannot rest easy in convicting the two (2) accused based on circumstantial evidence. For, the pieces of the said circumstantial evidence presented do not inexorably lead to the conclusion that they are guilty.^[83] The prosecution witness failed to identify the accused in court. A cloud of doubt continues to hover over the gun used and the slug recovered. The dying declaration and paraffin examination remain unreliable. Godofredo's uncounseled admissions including the gun he turned in are barred as evidence. And, the supposed motive of the accused is simply insufficient. Plainly, the facts from which the inference that the accused committed the crime were not proven. Accordingly, the guilt of the accused cannot be established, more so to a moral certainty. It is when evidence is purely circumstantial that the prosecution is much more obligated to rely on the strength of its own case and not on the weakness of the defense, and that conviction must rest on nothing less than moral certainty.^[84]

Consequently, the case of the prosecution has been reduced to nothing but mere suspicions and speculations. It is hornbook doctrine that suspicions and speculations can never be the basis of conviction in a criminal case.^[85] Courts must ensure that the conviction of the accused rests firmly on sufficient and competent evidence, and not the results of passion and prejudice.^[86] If the alleged inculpatory facts and circumstances are capable of two (2) or more explanations, one of which is consistent with the innocence of the accused, and the other consistent with his guilt, then the evidence is not adequate to support conviction.^[87] The court must acquit the accused because the evidence does not fulfill the test of moral certainty and is therefore insufficient to support a judgment of conviction.^[88] Conviction must rest on nothing less than a moral certainty of the guilt of the accused.^[89] The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.^[90] It is thus apropos to repeat the doctrine that an accusation is not, according to the fundamental law, synonymous with guilt – the prosecution must overthrow the presumption of innocence with proof of guilt beyond reasonable doubt. The prosecution has failed to discharge its burden. Accordingly, we have to acquit.

IN VIEW WHEREOF, the Decision of the Regional Trial Court of Naga City, Br. 25, in Crim. Cases Nos. 97-6815 and 97-6816 dated August 2, 1999, finding accused-appellants Godofredo B. Ador and Diosdado B. Ador III guilty beyond reasonable doubt of two (2) counts of murder and imposing on them the penalty of reclusion perpetua, is hereby REVERSED and SET ASIDE. Accused-appellants Godofredo B. Ador and Diosdado B. Ador III are ACQUITTED on reasonable doubt and their IMMEDIATE RELEASE is hereby ORDERED unless they are being held for some other legal cause.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Both dated 12 November 1997; Rollo, pp. 17-18.

[2] Diosdado A. Ador Sr. is interchangeably referred to in the different parts of the records as simply, Diosdado A. Ador, without the suffix “Sr.”

[3] Prosecution witnesses referred to Chavez as “Ompong”.

[4] TSN, 27 May 1999, pp. 2-3; 14-15.

[5] Id., 18 February 1998, pp. 8-12, 26.

[6] Id., 4 February 1998, pp. 5-6.

[7] Id., pp. 7-9.

[8] Id., 30 June 1999, pp. 4-5.

[9] Id., 4 February 1998, pp. 11-14.

[10] Id., pp. 15, 26, 33; Exhibit “F” (Investigation Report), Folder of Exhibits, pp. 21-26.

[11] Id., 7 December 1998, p. 6.

[12] Id., 16 March 1998, pp. 30-31.

[13] Id., p. 31. The investigation report of SPO1 Barbosa (Exhibit “F-4”) states that the gun recovered was “an unlicensed revolver, caliber .38, TM - Smith and Wesson, (Paltik) without serial number.”

[14] Id., 26 February 1998, pp. 13-14.

[15] Id., pp. 8-9.

[16] Id., 16 March 1998, pp. 18-34.

[17] Id., 17 December 1998, pp. 11-15; Autopsy Report dated 11 March 1997, Original Records of Crim. Case No. 97-6815, p. 8.

[18] Id., 17 December 1998, pp. 16-17; Autopsy Report dated 12 March 1997, Original Records, Crim. Case No. 97-6816, p. 8.

[19] Id., 16 March 1998, pp. 10-12; Exhibit “N”, Folder of Exhibits, p. 47.

[20] Id., 9 February 1999, pp. 6-7; Exhibit “Q,” Folder of Exhibits, p. 49.

[21] While Reynaldo Ador was subjected to paraffin testing, he was not among those eventually charged. On the other hand, Diosdado Ador Jr. who was charged was not subjected to paraffin testing.

[22] Judgment of the trial court, pp. 16-17; Rollo, pp. 60-61; Exhibits “B,” “C,” “D,” and “E,” Folder of Exhibits, pp. 1-20.

[23] TSN, 16 March 1998, pp. 42-44.

[24] Exhibit “X”, Folder of Exhibits, pp. 70-80; The trial court’s finding that it was the brother of victim Cuya,

Absalon Cuya II, who was charged by Adelina Ador of multiple rape is not consistent with the Resolution of the Office City Prosecutor dated June 13, 1996 in I.S. No. 96-0380.

[25] Exhibits “V-2” to “V-8”, Folder of Exhibits, pp. 57-63.

[26] Exhibit “V” for Crim. Case No. 97-6816, Id., p. 54.

[27] Exhibits “W” and “W-1” for Crim. Case No. 97-6816, Id., pp. 67-68.

[28] Demurrer to Evidence, p. 4; Original Records, Crim Case No. 97-6815, p. 163.

[29] 13 May 1998 Order of the Trial Court, Original Records, Crim. Case No. 97-6815, p. 194.

[30] TSN, 1 September 1998, pp. 3-42.

[31] Id., 27 August 27, 1998, pp. 3-8.

[32] “Calsis” is interchangeably referred to as “Calcis” in the different parts of the records.

[33] TSN, 26 January 1999, pp. 10-11; The trial court appears to have misquoted the testimony of Calcis when in its 2 August 1999 Judgment, p. 19, it stated that Diosdado Ador III was the one carrying a long firearm.

[34] Id., pp. 2-13; 8 February 1999, p. 16.

[35] Ibid.

[36] Id., pp. 5-6.

[37] Id., pp. 17-18.

[38] Id., p. 7.

[39] Id., pp. 10-11.

[40] Id., pp. 20-21.

[41] Id., 25 May 1999, pp. 7-8.

[42] Id., 19, May 1999, pp. 6-8.

[43] Id., 27 May 1999, pp. 2-10.

[44] Id., 14 June 1999, pp. 3-7.

[45] Id., pp. 14-16.

[46] Id., 30 June 1999, pp. 3-5.

[47] Id., p. 16.

[48] Judgment of the trial court, p. 24; Rollo, p. 68.

[49] Id., p. 25; Id., p. 69.

[50] Rollo, pp. 103-104.

[51] People v. Ayola, G.R. No. 138923, 4 September 2001, 364 SCRA 451.

[52] People v. Concepcion, G.R. No. 131477, 20 April 2001, 357 SCRA 168.

[53] *People v. Flores*, G.R. No. 116488, 31 May 2001, 358 SCRA 319; *People v. Abriol*, G.R. No. 123137, 17 October 2001, 367 SCRA 327.

[54] *People v. Bato*, G.R. No. 113804, 16 January 2001, 284 SCRA 223.

[55] *People v. Solis*, G.R. No. 138936, 30 January 2001, 350 SCRA 608.

[56] *People v. Bato*, G.R. No. 113804, 16 January 2001, 284 SCRA 223; *People v. Maluenda*, G.R. No. 115351, 27 March 1998, 288 SCRA 225.

[57] *People v. Olivio, Jr.*, G.R. No. 130335, 18 January 2001, 349 SCRA 499; *People v. Lugod*, G.R. No. 136253, 21 February 2001, 352 SCRA 498; *People v. Lavapie*, G.R. No. 130209, 14 March 2001, 354 SCRA 351; *People v. Ellasos*, G.R. No. 139323, 6 June 2001, 358 SCRA 516; *People v. Corre, Jr.*, G.R. No. 137271, 15 August 2001, 363 SCRA 165; *People v. De Las Eras*, G.R. No. 134128, 28 September 2001, 366 SCRA 231; *People v. Canlas*, G.R. No. 141633, 14 December 2001, 372 SCRA 401; *People v. Baconguis*, G.R. No. 149889, 2 December 2003.

[58] *People v. Consejero*, G.R. No. 118334, 20 February 2001, 352 SCRA 276; *People v. Leano*, G.R. No. 138886, 9 October 2001, 366 SCRA 774; *People v. Patriarca*, G.R. No. 137891, 11 July 2001, 361 SCRA 88; *People v. Nanas*, G.R. No. 137299, 21 August 2001, 363 SCRA 452.

[59] *People v. Ayola*, G.R. No. 138923, 4 September 2001, 364 SCRA 451.

[60] *People v. Cabaya*, G.R. No. 127129, 20 June 2001, 359 SCRA 111.

[61] Judgment of the trial court, p. 19; Rollo, p. 63.

[62] TSN, 26 January 1999, p. 11.

[63] *Id.*, pp. 6-8.

[64] Judgment of the trial court, p. 22; Rollo, p. 66.

[65] *People vs. Pacuancua*, G.R. No. 144589, 16 June 2003; *People vs. Sibonga*, G.R. No. 95901, 16 June 2003.

[66] *People v. Concorcio*, G.R. Nos. 121201-02, 19 October, 2001, 367 SCRA 586; *People vs. Masapol*, G.R. No. 121997, 10 December 2003.

[67] The proceedings before the trial court when Pablo Calsis was presented by the prosecution were as follows:

COURT:

Place it on record that this witness is being presented insofar as the accused Diosdado Ador Jr. and Diosdado Ador III who have recently been brought to the jurisdiction of this court (are concerned).

ATTY. TERBIO (Private Prosecutor):

We intend to present this witness as an additional witness to the one being tried, Godofredo Ador, because insofar as his case is concerned, it is not yet terminated.

COURT:

You cannot do that because you have already rested your cases and the defense as well has presented its evidence (TSN, 26 January 1999, p. 2).

[68] *People v. Cantonjos*, G.R. No. 136748, 21 November 2001, 370 SCRA 105.

- [69] *People v. Cabaya*, G.R. No. 127129, 20 June 2001, 359 SCRA 111.
- [70] *People v. Sinco*, G.R. No. 131836, 30 March 2001, 355 SCRA 713.
- [71] *People v. Melencion*, G.R. No. 121902, 26 March 2001, 355 SCRA 113; *People v. Teves*, G.R. No. 141767, 2 April 2001, 356 SCRA 14.
- [72] TSN, 26 February 1998, p. 8.
- [73] *Id.*, 16 March 1998, p. 20.
- [74] *Id.*, 9 February 1999, p. 7.
- [75] Order of the Trial Court, pp. 5-6; Original Records, Crim. Case No. 97-6815, pp. 192-193.
- [76] *People v. Abriol*, G.R. No. 123137, 17 October 2001, 367 SCRA 327.
- [77] G.R. No. 124301, 18 May 1999, 307 SCRA 177, 187-188.
- [78] Sec. 12, Art. III, 1987 Constitution provides: “(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel x x x (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.”
- [79] *People v. Sia*, G.R. No. 137457, 21 November 2001, 370 SCRA 123.
- [80] G.R. No. 64086, 15 March 1990, 183 SCRA 196.
- [81] *People v. Teves*, G.R. No. 141676, 2 April 2001, 356 SCRA 14; *People v. Samson*, G.R. No. 133437, 16 November 2001, 369 SCRA 229.
- [82] *People v. Mantes*, G.R. No. 117166, 3 December 1998, 299 SCRA 562.
- [83] *People v. Mijares*, G.R. No. 126042, 8 October 1998, 297 SCRA 520.
- [84] *People v. Caparas, Jr.*, G.R. Nos. 121811-12, 14 May 1998, 290 SCRA 78.
- [85] *People v. Cuadro*, G.R. No. 124704, 22 February 2001, 352 SCRA 537.
- [86] *People v. Francisco*, G.R. Nos. 135201-02, 15 March 2001, 354 SCRA 475.
- [87] *People v. Williams*, G.R. No. 125985, 20 April 2001, 357 SCRA 124; *People v. Mariano*, G.R. No. 133990, 26 June 2001, 359 SCRA 648.
- [88] *People v. Leano*, G.R. No. 138886, 9 October 2001, 366 SCRA 774.
- [89] *People v. Baulite*, G.R. No. 137599, 8 October 2001, 366 SCRA 732.
- [90] *People v. Cabaya*, G.R. No. 127129, 20 June 2001, 359 SCRA 111; *People v. Villaflores*, G.R. Nos. 135063-64, 5 December 2001, 371 SCRA 429.

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